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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/702,361 | 11/06/2003 | Melissa Lee Merlau | A01462 | 8529 |

21898 7590 05/29/2007
ROHM AND HAAS COMPANY
PATENT DEPARTMENT
100 INDEPENDENCE MALL WEST
PHILADELPHIA, PA 19106-2399

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| EXAMINER |
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BARHAM, BETHANY P

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| ART UNIT | PAPER NUMBER |
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1615

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05/29/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/702,361

Applicant(s)

MERLAU ET AL.

Examiner

Bethany P. Barham

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 April 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 7-9 is/are pending in the application.
- 4a) Of the above claim(s) 8 and 9 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Summary

Receipt of Applicant's After Final Amendment filed on 04/26/2007 is acknowledged. Prosecution of the application is hereby reopened and finality withdrawn. Claims 1 and 7 are pending. Claims 1 and 7 are rejected.

Due to Applicant's Amendment the 35 U.S.C. 102 rejection over US 6,136,884 is hereby **withdrawn**.

NEW REJECTIONS

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over 2004/0057923 A9 ('923) or US 2003/0147833 A1 ('833).

The limitations of claims 1 and 7 are taught by '923 or '833:

- Both '923 and '833 teach a reshapable hair styling composition comprising, optionally in a cosmetically acceptable vehicle, at least one (meth)acrylic

copolymer which comprises: (a) units derived from at least one monomer chosen from butyl (meth)acrylate monomers, (b) units derived from at least one monomer chosen from hydroxy alkyl (meth)acrylate monomers, and optionally units derived from at least one monomer other than the (a) and (b) monomers (abstracts and claims 1-2). Both applications teach at least one additional constituent is chosen from a cationic, anionic, nonionic and amphoteric polymers ('923 claims 21-22 and '833 claims 20-21).

- Both '923 and '833 teach that the at least one (meth)acrylic copolymer comprises (a) n-butyl (meth)acrylate, (b) 2-hydroxy ethyl (meth)acrylate and (c) can be methyl (meth)acrylate, ethyl (meth)acrylate, (meth)acrylic acids, etc. ('923 claims 3-12 and '833 claims 3-12). '923 also teaches that (a) can be from about 10 to about 90 weight %, (b) from about 2 to about 50 percent (pg. 1, [0006]).
- The cationic, anionic, nonionic and amphoteric polymers of both '923 and '833 at taught to include: cationic conditioning polymers like Gaffix VC 713 (Tg 85°C, '923 pg. 6, [0062]),
- anionic polymers like acrylate copolymers Acrylidone LM and Luvimer 100 P (Tg ~95°C), Gantrez AN or ES (Gantrez ES 425), Resin 28-2930, Flexan 130 (Tg 112°C, '923 pg. 9-10 [0108, 0111, 0117, 0119-0120]);
- amphoteric polymers including Amphomer LV 71 or Lovocryl 47 (Tg 130°C, '923 pg. 11 [0131]),
- and nonionic polymers including PVP, PVP/VA (Tg 98°C), polyurethanes (Tg 74.5-120°C), etc ('923 pg. 13-14 [0158-0161, 0171]).

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- Examiner respectfully points out that the polymers taught by '923 and '833 are taught by applicants specification Table 1 to have acceptable high Tg for the 'first polymer', pg. 12-13, and thus, like the instant application, the difference in Tg between the first polymer, an acid-functional polymer, and the second polymer, a copolymer, can be 40° C or more.
- '923 and '833 teach further constituents chosen from reducing agents, silanes, fatty substances, thickeners, plasticizers, anti-foam agents, fillers, sunscreens, etc ('923 claims 21 and '833 claims 20). '833 teaches that the composition is in a form chosen from sprays, aerosols, mousses, gels, sticks, muds, lotions, creams, dispersions, and emulsions (claim 23) and both teach that the composition is "reshapable" providing hair styling that can be restored or modified without new material or heat being applied and is long lasting 10-24 hours without drooping or loss of setting ('833 pg. 2 [0018] and '923 pg. 3 [0026]).
- '923 and '833 do not teach the at least one (meth)acrylic copolymer with a Tg of 20-35°C or a film of specific tensile strength modulus, but do teach in claims 20 a Tg from about -100°C to about 15°C.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to look to '923 and '833 for a composition with cosmetically acceptable vehicle, at least one (meth)acrylic copolymer, and a second polymer for hair styling. One of ordinary skill in the art would know how to optimize the ranges of the Tg for the at least one (meth)acrylic copolymer of '923 and '833, as the MPEP 2144.05 states "Where the general conditions of a claim are disclosed in the prior art, it is not inventive

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to discover the optimum or workable ranges by routine experimentation." Especially, since the art teaches a Tg of about 15°C, which reads on the instant claim 1 of Tg of 20°C and one of ordinary skill in the art would know how to obtain a specified glass transition phase given workable ranges of the monomers disclosed in '923 and '833. Furthermore, both '923 and '833 teach that the hair styling composition is 'reshapable' without new material or heat being applied and is long lasting 10-24 hours without drooping or loss of setting and '833 teaches fixing products such as sprays, gels, mousse, etc which are known in the art to form films and since the specific secondary polymers are disclosed and the monomers of the first polymer taught by the art it would have been prima facie obvious to make the composition of the instant application.

Correspondence


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bethany Barham whose telephone number is (571)-272-6175. The examiner can normally be reached on Monday to Friday; 8:30 a.m. to 5:00 p.m. EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Woodward can be reached on (571) 272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Bethany Barham
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MICHAEL P. WOODWARD
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600